

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-141
Table of Allotments,)	RM-10428
FM Broadcast Stations.)	
(Exmore and Belle Haven, Virginia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 29, 2002

Released: June 7, 2002

Comment Date: July 29, 2002

Reply Comment Date: August 13, 2002

By the Assistant Chief Audio Division:

1. The Audio Division has before it a petition for rule making filed on behalf of Commonwealth Broadcasting, LLC, licensee of Station WEXM(FM), Exmore, Virginia, and Sinclair Telecable, d/b/a Sinclair Communications, licensee of Station WROX-FM, Cape Charles, Virginia ("petitioners"), requesting that the Commission reallocate Channel 291B from Exmore to Belle Haven, Virginia as the community's first local aural transmission service, and modify Station WEXM's license to reflect the change of community. They also request that the Commission reallocate Channel 241B from Cape Charles to Exmore, Virginia to maintain the community's sole local aural transmission service, and modify Station WROX's license to reflect the change of community.

2. Petitioners filed their proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In each case, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. In support of their proposal, petitioners state that neither Exmore nor Cape Charles will be left without aural transmission service.³ Further, they provide information to support Belle Haven's status

¹ See *Report and Order* in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

² The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)], See *Second Report and Order* in BC Docket 80-130, ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1982).

³ Noncommercial educational Station WAZP will remain at Cape Charles and petitioners note that it places a 70dBu contour over the community.

as a community for allotment purposes.⁴ Petitioners state that Station WEXM has a preexisting shortspacing, but it is not a bar to this change of community because it is grandfathered pursuant to Section 73.213 of the rules due to changes to the rules authorized in MM Docket 80-90. Our engineering shows that the change of site will reduce the short-spacing from 10.01 kilometers to 5.2 kilometers. Pursuant to our policy adopted in the *Report and Order* in MM Docket No. 99-240,⁵ such a proposal can serve the public interest even if the licensee proposes a change of transmitter site, because the community to be served will receive its first local aural transmission service and the short spacing will actually be ameliorated.

4. We believe that the proposal warrants consideration since it would enable Station to reduce its short-spacing to Station WROX and will provide Belle Haven with its first local aural transmission service without removing the sole local transmission service from either Exmore or Cape Charles, which will serve priority (3) of the FM Allotment priorities. An engineering analysis has determined that Channel 291B can be allotted at Belle Haven at petitioner's requested site 8.5 kilometers (5.3 miles) west of the community.⁶ Channel 241B can be allotted at Exmore at a site 29.4 kilometers (18.2 miles) southwest of the community.⁷

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	<u>Channel</u>	
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Exmore, Virginia	291A ⁸	241B
Belle Haven, Virginia	---	291B
Cape Charles, Virginia	241B	---

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 29, 2002, and reply comments on or before August 13, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard M. Weiss

⁴ Petitioners state that Belle Haven is an incorporated town with a 2000 U.S. Census population of 521 persons. It has a Mayor-Town Council form of government, volunteer fire department, post office, zip code, numerous businesses, bed and breakfasts and a church.

⁵ 16 FCC Rcd 13876 (2001)(Albemarle and Indian Trail, North Carolina).

⁶ Coordinates for Channel 291B at Belle Haven are NL 37-31-46 and WL 75-54-44.

⁷ Coordinates for Channel 241B at Exmore are NL 37-18-02 and WL 75-59-05.

⁸ Station WEXM is licensed on Channel 291A, but was granted a construction permit by one-step application to upgrade to Channel 291B at Exmore (File No. BMPH-20010502AAR) which has not been reflected in the FM Table of Allotments.

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8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

10. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.